IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

CRL.A.No. 1019 of 2002()

SC. NO.895/2000 OF SESSIONS COURT, KOLLAM.

APPELLANT: ACCUSED NOS. 1, 2 AND 4
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1. **SAJEEV, S/O. VASUDEVAN,**
   MANAKKATTUKONAM VEEDU, IDAKKODUMURI,
   CHADAYAMANGALAM VILLAGE, KOTTARAKKARA TALUK.

2. **RAHIM, S/O. PEERUKANNU,**
   THANNIPURATHUVEEDU, POOMKODUMURI,
   CHADAYAMANGALAM VILLAGE, KOTTARAKKARA TALUK.

3. **VIJAYAKUMAR @ SANTHOSH**
   S/O. THANKAPPAN NAIR, AJAYABHAVANIL, IDAKKODU MURI
   CHADAYAMANGALAM VILLAGE, KOTTARAKKARA TALUK.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY CIRCLE INSPECTOR OF POLICE KADAKKAL REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON 22/11/2007 DELIVERED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.A.NO. 1019 OF 2002

DATED THIS THE 22nd day of November 2007

JUDGMENT

The appellants are accused 1,2 and 4 in S.C.No.895 of 2000 in the file of the Sessions Court, Kollam who stands convicted for the offences under Sections 324 & 323 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of six months each for the offence under Section 324 I.P.C. No separate sentence was awarded for the offence under Section 323 I.P.C.

2. Originally accused 4 in number were charge sheeted for the offences under Sections 324, 323 and 304 read with Section 34 I.P.C. on the allegation that on 2-4-1999 the accused on account of ill-will towards PW1 caused hurt to PW1 at about 9.40 p.m. on the southern side of the road leading from Edakkodu junction to Velluppara Ela at Plamara Vathukkal on the northern side of the house of one Sukumaran and that the 2nd accused wrongfully restrained PW1 by putting a string around his neck and the 3rd accused fisted on PW1 and the 4th accused inflicted

a cut injury on the left leg above the knee of PW1 and that at the time the deceased Padmanabhan Nair, father of PW1 reached the place and pleaded not to cause hurt to PW1, and then the 2nd accused stamped on the stomach of Padmanabhan Nair and Padmanabhan Nair fell down and he was brought dead to the hospital. It is the allegation that the accused knew fully well that the deceased Padmanabhan Nair is a serious cardiac patient.

3. The evidence adduced consisted of the testimony of Pws.1 to 12 and Exts.P1 to P11, Mos.1 to 4 series. The trial court found that the evidence adduced did not contain sufficient material to come to the conclusion that the accused were aware of the illness of Padmanabhan Nair and that they had knowledge that the assault on Padmanabhan Nair would result in his death and hence found that only the offence under Section 323 I.P.C. has been established; and the accused were acquitted for the offence under Section 304 Part II. It was also found that there is no evidence as to the alleged overt act on the part of the 3rd

accused. The 3rd accused was also acquitted . Accused Nos. 1,2 and 4 were convicted only for the offence under Section 324 I.P.C. for having caused hurt to PW1 by use of MO.1 sword and for the offence under Section 323 I.P.C. for having assaulted Pws.1 and 2 and the deceased Padmanabhan Nair.

4. It is the evidence of PW1, the de facto complainant, PW2, a friend and neighbour of Pws.1 and 3 and PW3, the brother of PW1 that constitute direct evidence as to the incident. It was also found that MO.1 sword was recovered as per Section 27 confession statement of accused No.4.

5. It is the contention that the alleged Section 27 recovery of MO.1 as per Ext.P10(a) statement of the 4th accused cannot be relied as the statement did not contain the authorship of concealment of the weapon of offence. It was held that the authorship of concealment is implied in Ext.P10(a). The statement of 4th accused proved by PW12, the investigating officer is "

6. Evidently the above statement did not contain the authorship as such. As contended by counsel for the appellant the law laid down in this regard by the Supreme Court is that there should be specific authorship concealment. It is specified that the element of criminality tending to connect the accused with the crime lies in the authorship of concealment, namely, that the person who gave information leading to discovery was the person who concealed it. (See **Pohalya Motya Valvi v. State of Maharashtra,(1980)1 S.C.C.530).** The above is the state of law that has been followed: (See **George v. State of Kerala. 1994(1)K.L.T.S.N.9,** all the same, I find that the version of PW12 the investigating officer that it was the 4th accused who lead him to the place where from the weapon was recovered is relevant under Section 8 of the Evidence Act. (See **A.N.Venkatesh v. State of Karnataka, A.I.R 2005 S.C.3809.)**

7. The F.I.S.was recorded by PW9, A.S.I on the next day morning at 8.30 a.m. from PW1 who was undergoing treatment at the hospital. It was contended that there was delay in recording the F.I.S.as it has reached the court only on 5-4-1999. It was explained that on 4-4-1999 was a Sunday. The court found that the delay cannot be treated as fatal; and rightly so. It has to be noted that the deceased was declared dead at 11.45 p.m.at the hospital and PW1 was an inpatient at the hospital. The injuries sustained by PW1 also stands established form the version of PW5, the Doctor who issued Ext.P4 wound certificate. In view of the above facts proved only on account of the delay in the F.I.S. Or the F.I.R. reaching the court, the prosecution version cannot be discarded.

8. As to the incident as such, the prosecution version is supported by the version of PW1 as to the injuries sustained by him. It is his version that Pws.1, 2 and 3 that the accused and the witnesses are quite well acquainted and are persons residing in the locality and are co-workers in a particular political party.

What provoked the incident was not any serious matter. It is the version of PW1 that on 2-4-1999 at about 9.30 p.m.the first accused came to his house and took him out to the road and when they reached near the house of one Sukumaran, the rest of the accused rushed to him and the 2nd accused put a string around the neck of PW1 and the 3rd accused fisted on the chest of PW1 and 4th accused inflicted a cut injury on the left leg of above knee of PW1 and the 4th accused again attempted to inflict blows with the sword, PW1 evaded the same and in the above attempt his right hand forefinger was injured . The 4th accused shouted at him as to what he told about them to the brother of Sajeevan, i.e. the first accused. At the time the deceased Padmanabhan Nair, the father of PW1 came to the spot pleading that his son may not be killed and the 2nd accused pushed him aside and stamped on his abdomen and he fell down then PW1 cried aloud pleading not to kill his father. At the time PW2 reached the place and tried to lift the deceased and the accused fisted PW2 also. PW3 also reached the place. As to the part of

the incident that the 2nd accused kicked on the stomach of Padmanabhan Nair and Padmanabhan Nair fell on his back and that the accused fisted PW2 also, the evidence in this regard is of Pws.2 and 3 also apart from that of PW1. As contended by counsel for the appellant the evidence of Pws.2 and 3 that they have seen the 2nd accused kicking the deceased Padmanabhan Nair appears hardly convincing. According to the prosecution, It is only on hearing the cries of PW1 that Pws.2 and 3 reached spot. Hence it is unlikely that Pws.2 and 3 would have witnessed the 2nd accused kicking on the stomach on Padmanabhan Nair. All the same, I find that the evidence of PW1 as to the incident stands not discredited as such. His version is further supported by the medical evidence in the matter. PW5, the Doctor has proved Ext.P4 wound certificate wherein it is noted that PW1 has sustained an incised wound 3 x 0.5 cm.obliquely in the anterior aspect of the middle of left thigh and a linear abrasion 2 cm from the lower end of the above wound and also a lacerated wound 1 cm x 0.5 cm on the inner aspect of right index finger.

Ext.P4 would also show that he was an inpatient at the hospital upto 13-4-1999. PW5, the Doctor has also stated that the injuries can be caused by coming into contact with a sharp edge weapon like MO.1 sword. I find that no contradiction with respect to previous statement of PW1 has been proved. The persons are previously well acquainted and hence the question of identity does not arise. In the circumstances, I find no reason to interfere in the finding that the accused are convicted for the offences under Sections 324 and 323 I.P.C.

9. So far as the sentence is concerned counsel for the revision petitioner has pleaded for leniency pointing out that more than 9 years have elapsed since the date of the incident and the commencement of the proceedings and that the sole means of livelihood of the families of the appellants are the income of the accused and that they hailed from very poor circumstances. It is also pointed out that they have undergone pre-trial detention for more than one month each. In the circumstances, I find that further imprisonment can be avoided.

Hence the sentence is modified to imprisonment already undergone and to pay a fine of Rs.5,000/-each and in default to undergo simple imprisonment for six months each for the offence under Section 324 I.P.C. The order of the court below awarding no separate sentence under Section 323 I.P.C. is sustained. The appeal is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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P.S.TO JUDGE

K.R.UDAYABHANU, J

CRL.A. NO. 1019 OF 2002

JUDGMENT

22-11-2007